

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

PROMOWEST PRODUCTIONS, INC.,	:	Case 09-RC-261089
	:	
Employer	:	
v.	:	
	:	
INTERNATIONAL ALLIANCE OF	:	
THEATRICAL STAGE EMPLOYEES AND	:	
MOVING PICTURE TECHNICIANS, ARTISTS	:	
AND ALLIED CRAFTS OF THE UNITED	:	
STATES AND CANADA, AFL-CIO (IATSE)	:	
LOCAL 12	:	
	:	
Petitioner.	:	

STATEMENT IN OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW

Pursuant to Sections 102.67(c), (e) and 102.69(c)(2) of the Board’s Rules and Regulations, Petitioner IATSE Local 12 sets forth this statement in opposition to the Employer’s Request for Review. The Decision of the Region 9 Director to certify the election results was well within settled precedent of the Board and the Employer voluntarily agreed to mail ballot procedure, as well as a formula for eligible voters in the Stipulated Election Agreement set forth as Exhibit B to the Employer’s Request.

I. BACKGROUND

On or about June 24, 2020, the parties entered into a Stipulated Election Agreement, which included a mail ballot election as well as an agreed-upon formula for eligible voters. The Agreement set the forth voting period of July 9 to July 31, 2020. Ballots had to be returned to NLRB Region 9 by July 31, 2020 in order to be counted on August 3, 2020. See paragraph 4 of Exhibit B of the Employer’s Request. The parties agreed to the aforementioned dates and

requirements, upon a unit description, as well as an eligibility formula. The election began approximately two (2) weeks after the Stipulations were signed.

On Monday, August 3, the parties joined the Region by video conference to review the count of the ballots. The Employer made no complaint at the time during the counting that it had difficulty seeing the ballots, each of which was presented to both parties by the Board Agent Michael Riggall, who waited until both parties stated that had seen the ballot envelope before moving on. At the end of the video conference, there were 16 votes cast in favor of representation, 13 against, 5 ballots voided, and 3 challenged ballots. The parties stipulated that the challenged ballots should not be counted under the agreed up eligibility formula and the Regional Director approved of the stipulation on August 24, 2020. See Exhibit I attached to the Employer's Request.

On August 28, 2020, the Regional Director administratively denied the Employer's Objections that had been filed on August 10, 2020. *Id.* The Employer requested an extension of time to Request to Review from the Board until September 25, 2020 with a corresponding extension of the Union's opposition filing to October 9, 2020. This Extension was granted on September 3, 2020.

II. ARGUMENT

The Regional Director's August 28th determination conforms with well-established Board precedent and was based on substantial evidence that the voters had an adequate opportunity to participate in the election. Even when an overwhelming number of voters do not participate in the election, the Board upholds an election when employees receive adequate notice of the election, given an adequate opportunity to vote, and employees were not prevented from voting due to the mechanics of the election. See *Lemco Construction, Inc.*, 283 NLRB 459 (1987); *Northern Star Realty Co.*, 283 NLRB 1159 (1987).

In this matter, there is not claim that eligible employees lacked notice, as the Employer, itself, provided the Notice of Election. That Notice clearly states that: (1) Any ballot received in an envelope that is not signed will be automatically void, and (2) Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Monday, July 20, should communicate immediately with the National Labor Relations Board... Employer Exhibit C. The Employer also agreed in the Stipulations to the use of a mail ballot election, the voting period, and the date ballots had to be returned to the Region. Employer Exhibit B. NLRB Region 9 sent replacement ballots to voters requesting such in a timely manner after notification. They also notified several voters of unsigned ballots, also sending replacement ballots, even though the Notice of Election is clear that such votes will not count.

The Employer now claims issues regarding the reliability of the United States Postal Service (USPS) have adversely affect voters. However, the Employer made no attempt to seek any sort of remedy or ask for an extension or alteration the Stipulation it had agreed to prior to the election results, even though many of the exhibits provided show the alleged problem was evident prior to the vote count. See Exhibit N attached to the Employer's Request. It was only after the Employer discovered it was deficient in the vote count that it raised concerns regarding the postal service. If this was an issue that was of concern to the Employer, it should have been brought forward prior to the counting of the ballot. Further, many of the concerns, whether accurate or not, brought forth by the Employer predated its signed Stipulation. The Office of the Inspector General for the United States Postal Service reported in September of 2019 found that the Postal Service has not met a majority of its service performance targets for the preceding 5 year period.

<https://www.uspsoig.gov/sites/default/files/document-library-files/2019/NO-AR-19-008.pdf>

Nonetheless, the Employer agreed to the use of the mail ballots and the time period for employees to be allowed to vote.

The Employer also claims that as a result of COVID-19, the individuals that the Employer previously agreed were to be included in the formula no longer shared a community of interest and a new election should be order. As of June 24, 2020, the dated the Stipulations were entered into, the pandemic was well underway, and the Employer had already shut down its operation for several weeks. The election began only two weeks later that the election and somehow during the time period between June 24 and July 31, the Employer claims the community of interest it stipulated just a month before had been lost once it realized that it was unsuccessful in the ballot count. We again have a situation in which there was no objection to the process, in fact agreement was made on the process, until after an unfavorable result for the Employer was reached.

The potential issues raised by the postal service and the COVID pandemic were known to the Employer at the time the Stipulations were entered into. The Employer cannot know make a case the treatment of the ballots and agreed-up formulary for voter eligibly is somehow deficient after its loss.

The Employer has provided no compelling evidence that the Regional Director's decision should be reviewed. For the reasons set forth in the Regional Director's report and for the foregoing reasons, we ask the Board not to accept the Employer's Request for Review.

Respectfully submitted,

s/ Cathrine J. Harshman
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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, a copy of the foregoing Statement in Opposition was served on counsel for the Employer at the email address indicated below, and to the Regional Director at Matthew.Denholm@NLRB.gov

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s/ Cathrine J. Harshman